

\* The original of this document contains information which is subject to withholding from disclosure under 5 U.S.C. 552. Such material has been deleted from this copy and replaced with XXXXXX's.

December 16, 2005

## **OFFICE OF HEARINGS AND APPEALS**

### **Hearing Officer's Decision**

Name of Case: Personnel Security Hearing

Date of Filing: March 22, 2005

Case Number: TSO-0208

This Decision concerns the eligibility of XXXXXXXXXXXX (hereinafter referred to as "the individual") to hold an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." A Department of Energy (DOE) Operations Office suspended the individual's access authorization under the provisions of Part 710. This Decision considers whether, on the basis of the evidence and testimony presented in this proceeding, the individual's access authorization should be restored. As set forth below, it is my decision that the individual's access authorization should not be restored at this time.

### **I. Background**

The individual has been employed by a contractor at a DOE facility since 1992 and held an access authorization at the request of his employer. In 1995, the individual was arrested for driving while intoxicated (DWI). During annual physicals in 2002 and 2003, the individual's blood tests revealed elevated liver enzymes, which site medical personnel suspected to be a result of excessive alcohol consumption. Based on the test results and two alcohol-related arrests (one prior to his employment), the local security office (LSO) then asked the individual to participate in a Personnel Security Interview (PSI). The LSO conducted the PSI in March 2004, but the derogatory information was not resolved. The LSO then referred the individual to a DOE consultant psychiatrist for a psychiatric evaluation. The psychiatrist evaluated the individual in May 2004 and concluded that the individual suffered from alcohol dependence in early full remission. The psychiatrist also opined that the individual: (1) has been and is a user of alcohol habitually to excess; and (2) has an illness, alcohol dependence, which causes or may cause, a significant defect in his judgment or reliability.

In October 2004, the LSO informed the individual how to proceed to resolve the derogatory information that had created a doubt regarding his eligibility for continued access authorization. Notification Letter (October 14, 2004). The Notification Letter stated that the derogatory information regarding the individual falls within 10 C.F.R. § 710.8 (h) and (j) (Criteria H and J). The LSO invoked Criterion H on the basis of information that the individual has an illness or mental condition of a nature which causes, or may cause, a

significant defect in his judgment or reliability. The LSO invoked Criterion J on the basis of information that the individual has been or is a user of alcohol habitually to excess, or has been diagnosed by a board-certified psychiatrist, or other licensed physician or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse. In this regard, the Notification Letter states that a DOE consultant-psychiatrist diagnosed the individual as alcohol dependent without adequate evidence of rehabilitation or reformation, and that the psychiatrist concluded that the alcohol dependence is a mental condition which causes a significant defect in his judgment or reliability.

In a letter to DOE Personnel Security, the individual exercised his right under Part 710 to request a hearing in this matter. 10 C.F.R. § 710.21(b). On March 22, 2005, I was appointed as Hearing Officer in this case. After conferring with the individual's attorney and the appointed DOE counsel, 10 C.F.R. § 710.24, I set a hearing date. At the hearing, the DOE consultant-psychiatrist ("the psychiatrist") testified on behalf of the agency. The individual testified on his own behalf and also elected to call a substance abuse counselor, his wife and two other witnesses. The transcript taken at the hearing shall be hereinafter cited as "Tr." Various documents that were submitted by the DOE counsel during this proceeding constitute exhibits to the hearing transcript and shall be cited as "Ex." Documents that were submitted by the individual during this proceeding are also exhibits to the hearing transcript and shall be cited as "Indiv. Ex."

## **II. Analysis**

The applicable regulations state that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable or unfavorable, as to whether the granting of access authorization would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Although it is impossible to predict with absolute certainty an individual's future behavior, as the Hearing Officer I am directed to make a predictive assessment. There is a strong presumption against the granting or restoring of a security clearance. See *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for the granting of security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th. Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

I have thoroughly considered the record of this proceeding, including the submissions of the parties, the evidence presented and the testimony of the witnesses at the hearing convened in this matter. In resolving the question of the individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c): the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the voluntariness of the participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuance or recurrence; and other relevant and material factors. After due deliberation, it is my opinion

that the individual's access authorization should not be restored at this time because I cannot conclude that restoration would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings that I make in support of this determination are discussed below.

### **A. Findings of Fact**

In 1981, the individual was arrested for Possession of Alcohol by a Minor and Riding with an Intoxicated Driver. Ex. 3 at 6, fn 9; at 15. At this time, the individual typically drank one six-pack of beer three times a week. PSI at 27. In 1992, the individual was hired by a contractor to work at the DOE facility and was granted a clearance after employment. Tr. at 11; Letter from DOE Hearing Counsel to Individual (April 14, 2005). In August 1995, the individual was arrested for driving while intoxicated (DWI) at a road block. Ex. 10. His license was revoked for 90 days, and he was ordered to attend an alcohol program and a screening and assessment program, to perform 48 hours of community service, to pay a fine and to spend 48 hours in jail. *Id.* According to the individual, he had consumed five 12-ounce cans of beer prior to approaching the roadblock, and his blood alcohol level registered at 0.18. Ex. 11.

In required annual physicals in 2002 and 2003, the results of the individual's blood tests showed elevated liver enzymes. Ex. 3 at 8-10. The individual described his typical alcohol consumption around this time as one 24-ounce beer two or three times during the week, and one to two six-packs on two or three weekends each month. PSI at 16-20, 27. He would consume a six pack in six or seven hours and he was last intoxicated 10 days before the 2003 physical. PSI at 36. The LSO removed the individual from the PSAP program in October 2003. Tr. at 44. EAP personnel then referred the individual to the site psychologist, who diagnosed the individual as suffering from alcohol abuse. PSI at 10; Tr. at 44. The individual began sessions with the site psychologist in October 2003. PSI at 8-9. After seven sessions, the psychologist referred the individual to an alcohol counselor. PSI at 12. In November 2003, the individual began weekly appointments with the alcohol counselor, and continued those sessions to the date of the hearing. Tr. at 44. The counselor recommended that the individual attend Alcoholics Anonymous (AA). Tr. at 23. The individual attended seven AA meetings, but then stopped attending because he felt that his sessions with the alcohol counselor and the support of his wife were sufficient to resolve his problem. PSI at 23; Tr. at 24.

A DOE consultant-psychiatrist evaluated the individual in May 2004 and diagnosed the individual with alcohol dependence in early full remission. Ex. 3 at 21. The psychiatrist determined that the individual, who self-reported 8 months of abstinence, did not exhibit adequate evidence of reformation or rehabilitation from alcohol dependence. Ex. 3 at 22-25. The psychiatrist opined that eight months of abstinence was inadequate for the following reasons: (1) the individual had experienced three alcohol-related legal problems, including one DWI arrest while holding an access authorization; (2) the individual did not reduce his consumption of alcohol or stop drinking in 2002 on the advice of the site medical personnel; and (3) the individual did not have the "mindset" of someone in recovery—i.e., he did not have an AA sponsor, follow the "12 Step Program," or attend sufficient AA meetings. *Id.* at 22. In addition, the psychiatrist determined that alcohol

dependence was a mental illness or condition that caused a significant defect in the individual's judgment or reliability. *Id.* at 24. In order to present adequate evidence of rehabilitation, the psychiatrist recommended that the individual attend 100 hours of AA meetings at least once a week for at least one year, utilize a sponsor and completely abstain from alcohol for at least one year following the completion of the program. *Id.* at 23. In order to show reformation, the psychiatrist recommended that the individual maintain two years of sobriety if he completes a treatment program, or three years of sobriety if he does not complete a treatment program. *Id.*

## **B. DOE's Security Concern**

The excessive use of alcohol raises a security concern because of its intoxicating effect. "Because the use of alcohol at the very least has the potential to impair a user's judgment and reliability, individuals who use alcohol to excess may be susceptible to being coerced or exploited to reveal classified matters. These security concerns are indeed important and have been recognized by a number of Hearing Officers in similar cases." *Personnel Security Review*, OHA Case No. VSO-0417, 28 DOE ¶ 82,798 (2001), quoting *Personnel Security Review*, OHA Case No. VSA-0281, 27 DOE ¶ 83,030 at 86,644 (2000). The alcohol had the effect of impairing the individual's judgment such that he operated a motor vehicle while intoxicated, violated the law, and was arrested. Therefore, DOE's security concerns are valid and the agency has properly invoked Criteria H and J in this case.

## **C. Hearing Testimony**

### **1. The Individual**

The individual testified at the hearing that he did not recall describing his drinking habits as he was quoted in the psychiatrist's report. Tr. at 14. Specifically, he did not recall saying that he drank six to eight hours a day in 2002 and 2003. *Id.* He also denied saying that alcohol had caused him a problem with his employment or that he could not stop drinking when he wants to. *Id.* at 16-18. The individual testified that, on the advice of the site medical personnel who were concerned about his abnormal liver enzymes, he last consumed alcohol in October 2003. *Id.* at 20. He then began seeing the alcohol counselor once a week for an hour. *Id.* at 22. The individual admitted that he stopped attending AA sessions because "pretty much everybody had the same story" and the meetings became repetitive. *Id.* at 28. According to the individual, he gave AA a fair chance and feels that his current treatment program is sufficient. *Id.* at 26.

The individual's current treatment program consists of weekly one hour sessions with the alcohol counselor. *Id.* at 26-27. The individual credits these weekly sessions with helping him to acknowledge his alcohol dependence. *Id.* at 68. The individual considers himself an alcoholic, but stated that his wife supports his abstinence and that he does not intend to consume alcohol in the future. *Id.* at 24-27. His current lab results show that his liver enzymes are now within a normal range. *Id.* at 31; Indiv. Ex. 1. According to the individual, his wife is happy with his progress, and their relationship improved when he stopped drinking. *Id.* at 28. He testified that his entire family is supportive of his efforts to abstain. *Id.*

## **2. The Substance Abuse Counselor**

As evidence of rehabilitation and reformation, the individual presented the testimony of his substance abuse counselor. Tr. at 43, 66. The counselor, who is employed by the DOE site EAP program, testified that in November 2003 the individual was referred to him by site medical personnel who suspected excessive alcohol consumption. Tr. at 43-44. The counselor began weekly one hour sessions with the individual and also sent the individual for drug and alcohol testing weekly until January 2004, then once every two weeks, and now monthly. *Id.* The counselor did not disagree with the psychiatrist's report, but did disagree with the psychiatrist's diagnosis. *Id.* According to the counselor, the individual suffers from alcohol abuse, not alcohol dependence. *Id.* at 47-48. The counselor was not concerned that the individual stopped attending AA meetings because "[b]y definition, the alcohol abuser still has the ability -- the capability to learn from the consequences of [his] behavior." *Id.* at 47.

The counselor observed that the individual is honest, sincere, and committed to maintaining his sobriety. *Id.* at 45. The individual has described to the counselor the improvements in his family life that result from abstaining from alcohol. *Id.* at 46. The counselor opined that the individual has strong family values that help him maintain sobriety, even without the assistance of AA. *Id.* at 52. He considers the individual to be one of his best clients in terms of positive prognosis, and is optimistic about his continued sobriety. *Id.* at 54, 57-58. He concluded that the individual was no longer in denial, and found it promising that the individual had asked for additional counseling sessions after completing the required number of sessions. *Id.* at 57.

## **3. Other Witnesses**

The individual's wife of 23 years testified that he has not consumed alcohol for almost two years. Tr. at 82. She does not drink and they do not keep alcohol in their home. *Id.* She testified that he has been "a better husband" since he stopped drinking and that he has told her that he no longer needs alcohol. *Id.* at 86. A friend of the individual testified that he has not seen the individual drink in about five years. *Id.* at 62-63. The friend said that when he offered beer to the individual this year at a social event, the individual refused to drink. *Id.* at 63. The individual told the witness that he does not want to drink anymore. *Id.* at 64. The friend has visited the individual's house and has not seen alcohol there. *Id.* at 65. He described the individual as reliable and trustworthy. *Id.* at 65. The third witness has known the individual since elementary school and also attended the same AA meetings as the individual. *Id.* at 71. The witness described the individual as moving from denial to recognizing his drinking problem and attending AA meetings to seek help. *Id.* at 72. He described the individual as honest and sincere about stopping drinking. *Id.* at 73.

## **4. The DOE Psychiatrist**

The DOE psychiatrist testified at the conclusion of the hearing, and was present for the testimony of all other witnesses. Tr. at 100-119. The psychiatrist first explained how he arrived at the diagnosis that the individual has been and is a user of alcohol habitually to excess and is also alcohol dependent. *Id.* at 101. After meeting with the individual

personally in May 2004, the psychiatrist concluded that the individual met four of the criteria for alcohol dependence in one 12 month period (2003). *Id.* at 103-104. See also Ex. 3 at 21. The psychiatrist believed the individual's assertion that he had been abstinent for eight months at the time of the evaluation. However, he opined that even though eight months was close to one year of abstinence, it was an insufficient period to achieve rehabilitation for anyone diagnosed with alcohol dependence. *Id.* at 102. According to the psychiatrist, his diagnosis was supported by evidence of previous alcohol-related legal problems, the individual's failure to stop drinking on the advice of medical personnel in 2002, a self-described history of excessive drinking, and the absence of a "mindset of sobriety." *Id.* at 103-104, 109. The individual had not attended a substance abuse treatment program, and the psychiatrist concluded that the individual should spend considerable time in a group setting or community of people in recovery in order to show adequate evidence of rehabilitation or reformation. *Id.* at 104-106, 110. The psychiatrist opined that the individual required active involvement in the AA community, including a sponsor, and two years of abstinence in order to demonstrate rehabilitation, or three years of abstinence to demonstrate reformation. *Id.* at 110, 118.

When asked if his opinion changed after hearing all witness testimony, the DOE psychiatrist testified that the individual is showing evidence of rehabilitation or reformation, but it is not yet adequate. Tr. at 111-112. The psychiatrist noted some positive factors that weighed toward a favorable conclusion, including the support of his wife and family and 18 months of abstinence. *Id.* at 104. However, those positive factors could not overcome the psychiatrist's opinion that the individual's current treatment program (weekly individual counseling sessions) was inadequate to rehabilitate him from alcohol dependence. *Id.* at 106. He recommended treatment in a group setting with other people with alcohol problems. *Id.* According to the psychiatrist, a short-term alcohol treatment program correlates with short-term abstinence and not long-term sobriety. *Id.* at 109. In comparison, the psychiatrist described AA as a fellowship where a member picks up the "mind set" and values of sobriety. *Id.* at 110. The psychiatrist also noted the denial evident in the individual's response to the Notification Letter and his minimal attendance at AA. *Id.* at 107-9. He concluded that there was nothing to keep the individual from drinking again if his clearance were restored. *Id.* at 111, 116.

In a Part 708 proceeding, the Hearing Officer gives great deference to the expert opinions of mental health professionals regarding rehabilitation or reformation. See *Personnel Security Hearing*, Case No. VSO-0476, 28 DOE ¶ 82,827 (2001). In this case, the mental health counselor argued that the individual suffered from alcohol abuse, and had been rehabilitated by 18 months of abstinence and 20 months of weekly one-on-one sessions.\* The DOE psychiatrist, on the other hand, diagnosed the individual as alcohol dependent, and found that the weekly sessions were inadequate evidence of rehabilitation. *Id.* at 105. According to the psychiatrist, individual counseling is not an alcohol treatment program that utilizes the group process and thus cannot restore the individual to a higher level of functioning. *Id.* at 106.

---

\* The alcohol counselor holds a masters degree in counseling and is not a psychiatrist or licensed clinical psychologist. Tr. at 43; 10 C.F.R. Part 710.8(h), (j).

I find the testimony and arguments of the DOE psychiatrist to be persuasive. Even though there are factors that favor the individual's argument that he is rehabilitated – strong family support, witness corroboration of his abstinence and commitment to sobriety, 20 months of regular sessions with the alcohol counselor, clean drug and alcohol tests, and normal liver enzymes – they do not outweigh the negative factors described above by the psychiatrist. I find the counselor to be a credible mental health professional, and I commend the individual for his 18 months of abstinence. However, there is credible evidence in the record that the individual was in denial about his alcoholism as recently as November 2004, when he responded to the Notification Letter. Ex. 2; Tr. at 110. It is also troubling that even after the counselor recommended AA to the individual, the individual attended only a few sessions and did not offer a persuasive reason for discontinuing his attendance. In addition, both professionals indicated that a diagnosis of alcohol dependence is a more serious condition than alcohol abuse that also requires a more rigorous treatment program. Tr. at 102. Given the diagnosis of alcohol dependence and the absence of an alcohol treatment program, I give greater weight to the conclusion of the DOE psychiatrist. Thus, I find that the individual has not mitigated the security concerns of Criteria H and J.

## **II. Conclusion**

As explained in this Decision, I find that the DOE Operations Office properly invoked 10 C.F.R. § 710.8 (h) and (j) in suspending the individual's access authorization. The individual has not presented adequate mitigating factors that alleviate the legitimate security concerns of the DOE Operations Office. In view of these criteria and the record before me, I cannot find that restoring the individual's access authorization would not endanger the common defense and security and would be consistent with the national interest. Accordingly, I find that the individual's access authorization should not be restored at this time.

Valerie Vance Adeyeye  
Hearing Officer  
Office of Hearings and Appeals

Date: December 16, 2005